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In the Supreme Court of the United States

OCTOBER TERM, 1947

No. 769

PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK, PETITIONER

v.

SECURITIES AND EXCHANGE COMMISSION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE SECURITIES AND EXCHANGE COMMISSION IN OPPOSITION

OPINIONS BELOW

The opinion of the Circuit Court of Appeals for the Second Circuit (R. 393-399) is reported at 166 F. 2d 784. The opinion of the District Court (R. 288-318) is reported at 72 F. Supp. 767. The findings and opinion of the Securities and Exchange Commission (R. 60-98) have not yet been officially reported but are set forth in the Commission's Holding Company Act Release No. 7060.

JURISDICTION

The judgment of the Circuit Court of Appeals for the Second Circuit was entered on March 5, 1948 (R.399). The petition for a writ of certiorari was filed on April 28, 1948. The jurisdiction of this Court is invoked under Section 240 of the Judicial Code, as amended by the Act of February 13, 1925 (28 U. S. C. 347), made applicable by Section 25 of the Public Utility Holding Company Act of 1935 (15 U. S. C. 79 y).

QUESTIONS PRESENTED

1. Whether, in the case of a plan under Section 11(e) of the Public Utility Holding Company Act of 1935, found necessary to correct inequitable distribution of voting power among security holders of an operating subsidiary of a registered holding company, the Act vests in the Securities and Exchange Commission and the Federal courts exclusive power to determine whether the allocation of new securities is "fair and equitable", or empowers a State commission having regulatory jurisdiction over the operating company to veto the plan because of disagreement as to that issue.

2. Whether the Holding Company Act is unconstitutional if construed as not conferring such a veto power upon State commissions.

3. Whether the Court below erred in upholding the conclusions of the Securities and Exchange

Commission and the District Court that the instant plan is "fair and equitable."

STATUTES INVOLVED

The pertinent provisions of the Public Utility Holding Company Act of 1935, 49 Stat. 803, 15 U. S. C. 79a, *et seq.* (hereinafter referred to as the Act) are set out in the Appendix, *infra,* pp. 20-23. The New York statutes upon which petitioner relies are described in note 5, *infra,* pp. 5-6.

STATEMENT

Petitioner seeks review by this Court of a judgment of the Circuit Court of Appeals for the Second Circuit which affirmed an order of the United States District Court for the Eastern District of New York approving a plan of reorganization previously approved by the SEC under Section 11(e) of the Act. The sole objectors to the Plan in the courts below were the Public Service Commission of the State of New York (hereinafter referred to as "the PSC") and the Secretary of State of the State of New York.[1]

The Plan was filed with the SEC by Kings County Lighting Company (hereinafter referred to as "Kings"), an operating subsidiary of Long Island Lighting Company, which in turn is a regis-

[1] Representatives of the several classes of stockholders, including representatives of a substantial group of the preferred stockholders (R. 161) in whose interest the PSC seeks a larger participation, recommended approval of the Plan in the District Court (R. 183). The Secretary of State simply endorsed the position taken by the PSC.

tered public utility holding company.[2] Kings is a corporation organized under the laws of New York and is engaged in the manufacture, distribution and sale of gas in Kings County in the State of New York (R. 63). Its securities are held by persons residing in twenty-eight States and three foreign countries (R. 373-74) and are traded through the channels of interstate commerce (R. 193).

Kings has outstanding 44,000 shares of $100 par value cumulative preferred stock, and 50,000 shares of no par value common stock with a stated value of $40 per share (R. 66). As of April 30, 1946,[3] dividend arrearages on the preferred stock of Kings represented an accumulation of almost three

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[2] In 1936, the SEC accorded the Long Island Lighting Company system an administrative exemption from the Holding Company Act because of its predominantly intrastate character. In 1944, the PSC condemned a management-proposed recapitalization plan of the Long Island Lighting Company and noted that, unlike the SEC, it could not compel appropriate reorganizations but could only approve or disapprove plans submitted to it by the management. There ensued litigation by which the SEC attempted to stay consummation of the recapitalization pending a determination, after hearing, whether the 1936 exemption should be revoked. The litigation reached this Court with the granting of the SEC's petition for a writ of certiorari, 324 U. S. 837, but the cause was later dismissed as moot, 325 U. S. 833, the SEC having revoked the 1936 exemption because of changed conditions which established a basis for Federal intervention to protect the interests of the Long Island system's scattered security holders. The exemption was revoked only to the extent necessary to bring the registration and reorganization provisions of the Act into play. These proceedings are discussed in the opinion of the District Judge (R. 291-293), and in greater detail at R. 184-221, 376-383.

It is not disputed that the SEC has jurisdiction to consider a plan of reorganization of Kings under Section 11(e).

[3] The financial statements considered by the SEC in its administrative proceeding, and in turn by the District Court, are carried to April 30, 1946.

years of full dividends. No dividends have been declared on the common stock since 1936 (R. 64-66). On the basis of book value or liquidating value, after giving effect to concededly necessary accounting adjustments, the common stock is without any equity in the enterprise, being, in fact, "under water" to the extent of at least 2.1% of the adjusted capitalization and surplus (R. 66).[4] Nevertheless, the common stock, some 98% of which is owned by Long Island Lighting Company, has the exclusive voting power for the election of directors (R. 66-67).

On or about August 20, 1945, Kings filed a reorganization Plan with both the SEC and PSC, its submission to the latter Commission being for approval "to the extent required by the laws of the State of New York for the changes and issuance of stock necessary to effectuate and carry out said Plan" (R. 25).[5] The Plan was designed to effectu-

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[4] On the basis of somewhat different computations, the PSC found the common stock to be "under water" to a larger extent (R. 243).

[5] Section 38(1) of the New York Stock Corporation Law provides that a corporation shall not file an amended certificate of incorporation with the Secretary of State, and the Secretary of State shall not accept or file such a certificate, "unless it shall have endorsed thereon the consent and approval of the commission having jurisdiction of such corporation." Section 69 of the New York Public Service Law provides, in general, that a public utility company organized under the laws of New York may not issue securities without first securing from the Public Service Commission an order authorizing such issue. Section 26-a of the New York Corporation Law provides that a New York corporation which is the subject of a court-approved reorganization plan under the Holding Company Act may

ate an equitable distribution of voting power among the security holders of Kings in conformity with the requirements of Section 11(b)(2) of the Holding Company Act.

After hearings, and on February 5, 1946, the PSC issued a memorandum in which it criticized the Plan and concluded, among other things, (1) that certain accounting adjustments should be carried out in accordance with previous suggestions of the PSC; (2) that certain changes should be made in the proposed new capital structure; and (3) that the allocation of new securities to the old common stockholders should be limited to a "nominal amount" at most (R. 223-224).

On or about April 16, 1946, Kings amended its application before the PSC and its Plan before the SEC so as to incorporate therein the suggestions of the PSC with respect to capital structure and related accounting adjustments. The Amended Plan provided for a new capital structure consisting of $2,200,000 of preferred stock and $2,200,000 of common stock. Ten percent of the new common stock was to go to the existing common stock-

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do any of the things required by the court order or contemplated by the plan, but that

> any such plan, decrees or orders, relating to or affecting any corporation subject to the jurisdiction of the public service commission of the state of New York, shall neither be carried out nor given any effect unless and until said public service commission (i) shall have found such plan to be in the public interest and (ii) shall have approved by written order any changes in the capital structure, transfer of assets, or issuance of securities for which provision is made in such plan, decrees or order.

holders. The rest of the common stock, all of the preferred stock, and $191,484 in cash were to go to the existing preferred stockholders (R. 25-51).

Hearings upon the Amended Plan were held before the SEC, and various groups of interested security holders participated (R. 61). The PSC was given notice of the proceedings (R. 373), but did not avail itself of its right to become a party under Section 19 of the Act.[6] On December 13, 1946, the SEC issued its findings and opinion (R. 60-98). It interposed no objections to the proposed new capitalization and accounting adjustments. With respect to the allocation provisions of the Amended Plan, it found that the common stockholders were entitled to some participation reflecting their interest in prospective earnings under the existing capital structure, but that it could not find the plan "fair and equitable" unless the allocation of new common stock to the existing common stockholders were reduced from 10% to 7½% (R. 72-87).[7] On January 8, 1947, Kings filed with the SEC an amendment conforming to these suggestions (R. 99-117), and on January 9, 1947, the SEC

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[6] Section 19 provides in part:

> • • • In any proceeding before the Commission, the Commission • • • shall admit as a party any interested State, State commission, State securities commission. • • •

[7] The allocation of 7½% of the new common stock to the existing common stockholders represents a participation of 3.77% in the consolidated net assets of the company. This interest is also, of course, in a junior position as to earnings and distribution in event of liquidation.

entered its order approving the Amended Plan as thus further amended (R. 118-123).

At the request of the company, and pursuant to the provisions of Section 11(e), the SEC, on the same day, filed an application with the United States District Court for the Eastern District of New York for an order approving and enforcing the Plan (R. 4).

During the pendency of the District Court proceedings, the PSC rendered an opinion disapproving the Amended Plan; as is expressly stated in the present petition (Pet. 6, 23), the sole point of difference between the two agencies is over the question of the participation of the existing common stockholders, the PSC contending that they should receive no recognition at all in the reorganization.

Subsequently, counsel for the PSC urged the District Court to remand the Plan to the SEC upon various grounds, of which the following have not been abandoned in the present petition: (1) The Holding Company Act requires that approval of the local regulatory commission be obtained with respect to a Section 11(e) reorganization affecting an intrastate operating company; (2) the Holding Company Act is unconstitutional if construed as permitting the consummation of reorganization plans affecting intrastate operating companies without the approval of local regulatory commissions; and (3) the Plan is neither fair and equitable, nor feasible.

The Secretary of State of the State of New York endorsed the position of the PSC. All other parties, including representatives of the preferred stockholders (R. 183), recommended approval of the Plan. The District Court overruled the objections of the PSC in a carefully considered opinion (R. 288-318), and entered an order approving and enforcing the Plan (R. 319-322). The order of the Circuit Court of Appeals affirmed in all respects the order of the District Court (R. 399). Consummation of the Plan has been held in abeyance during the pendency of appellate proceedings (R. 367-368).

ARGUMENT

Insofar as the petitioner merely challenges the application by the Commission and both courts below of the "fair and equitable" standard to the instant plan, its contentions are either limited in their application to the facts of the present case or, as more fully revealed in the record, are in direct conflict with the uniform course of decisions by the SEC and the courts, including this Court's decision in *Otis & Co.* v. *Securities and Exchange Commission,* 323 U. S. 624. Indeed, petitioner concedes that this question "standing alone, is not of controlling importance. . . ." (Pet. 8).

Insofar as the petition assumes that the SEC and the courts below properly interpreted and applied the fair and equitable standard of Section 11(e), but nevertheless contends that the Federal

standard of what is fair and equitable treatment of the security holders may be overridden by a State authority, the issue raised is concededly of importance but is adequately dealt with by the court below, and does not require further review by this Court. There is no claim of conflict among the circuits, and indeed this is the first instance in more than ten years of administration of the Holding Company Act where there has been presented at even the administrative level the assertion by a State commission of power to veto a Section 11(e) plan.[8] It should be noted that even in this case the

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[8] Numerous section 11(e) plans, many of which have involved reorganizations of public utility operating companies, have been enforced in Federal district courts in some ten different States. Some of such proceedings are: *Puget Sound Power & Light Company, et al.,* D. Mass. No. 2308 (1943) (an operating company incorporated in Massachusetts and doing business in Washington); *Southern Colorado Power Company,* D. Colo. No. 670 (1944), affirmed *sub nom. Disman* v. *Securities and Exchange Commission,* 147 F. 2d 679 (C.C.A. 10), certiorari denied, 325 U. S. 863; *In re Laclede Gas Light Company,* 57 F. Supp. 997 (E. D. Mo.), affirmed *sub nom. Massachusetts Mutual Life Ins. Co.* v. *Securities and Exchange Commission,* 151 F. 2d 424 (C.C.A. 8), certiorari denied, 327 U. S. 795; *York County Gas Company,* M. D. Pa. No. 1652 (1945); *Georgia Power & Light Company,* M. D. Ga. No. 133 (1945); *Minnesota Power & Light Company,* D. Minn. No. 817 (1945); *Spokane Gas & Fuel Company,* E. D. Wash. No. 494 (1945); *Utah Power & Light Company,* D. Utah (1946); *Indiana Service Corporation,* N. D. Ind. No. 313 (1947); *Eastern Minnesota Power Corporation* and *Wisconsin Hydro-Electric Company,* D. Minn., Fifth Div., No. 844 (1947) (plan for reorganization of Wisconsin Hydro-Electric Company, incorporated and operating in Wisconsin).

SEC was able to approve a plan in which the capital structure for the new company fully conformed to the views of the PSC.

1. Petitioner's principal reliance is upon the Holding Company Act itself, which, as the SEC has always recognized, was intended to strengthen State regulation of operating companies and, accordingly, contemplates the exercise of concurrent jurisdiction by State regulatory authorities over various transactions which the Act subjects to the scrutiny of the SEC. Examples of the provisions of the Act which contemplate such concurrent jurisdiction are those concerning new securities issues (Sec. 6, 7), acquisitions of securities or other assets (Sec. 9, 10), regulation of service company relationships (Sec. 13), and regulation of accounting practices (Sec. 15, 20). In these sections, generally, the Holding Company Act imposes restraints upon the holding company managements to prevent the recurrence of the financial malpractices which had been revealed in the investigations antedating the Act and which are referred to in Section 1. The Congress, in imposing these purely negative restraints, has made it clear that it was generally consistent with this objective to permit in addition such restraints as might be imposed in furtherance of State policies. As the court below noted with reference to Section 7, "no purpose of the Act will be thwarted, if a 'declaration' fails" (R. 397).

Section 11, in contrast to the foregoing sections of the Act, evidences an affirmative Federal policy, stated in subsection (b), that it "shall be the duty of the Commission, as soon as practicable . . . to require by order . . ." action on the part of registered holding companies and their subsidiaries to conform to standards for the simplification of their properties and structures and to bring about a fair and equitable distribution of voting power among their security holders. Appendix, *infra*, pp. 20-21. This affirmative mandate is subject to no qualification as to conformity to State law. As the court below noted, "it becomes to the highest degree unlikely that Congress should have set up a system of dual control over the fulfillment of this purpose" (R. 396). *Cf. First Iowa Hydro-Electric Cooperative* v. *Federal Power Commission*, 328 U. S. 152. The intention of Congress in this respect need not be left to inference, since Section 21 expressly provides for saving the existing jurisdiction of State regulatory authorities only "insofar as such jurisdiction does not conflict with any provision of this title or any rule, regulation, or order thereunder," and the legislative history shows that this qualification was adopted with specific reference to Section 11.[9]

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[9] In the bill adopted initially by the Senate (S. 2796, 74th Cong., 1st Sess.), Section 21, in addition to its present language, had appended to it the following additional sentence: "Nothing in this title shall exempt any public-utility company from obedience to the law of any State in which it operates." This sentence was omitted from the draft of the bill reported to the House of Representatives

2. Petitioner relies largely upon prior SEC decisions to support its argument that plans of reorganization to effectuate compliance with Section 11 are subject to the limitation contained in Section 7 (g) (Appendix, *infra,* p. 20) insofar as new securities are to be issued under a plan (Pet. 20). The precedents relied on contain no suggestion, however, that the SEC considers its duty to bring about compliance with Section 11 to be subject to the veto power of State authorities. The precedents do show that the SEC has considered, in the light of the standards for financial soundness prescribed in subsections (c), (d) and (e) of Section 7, the appropriateness of the financial structure to emerge from a reorganization. *Cf. American Power & Light Company* v. *Securities and Exchange Commission,* 329 U. S. 90, 104-05, indicating that the standards of Section 11(b)(2) derive "meaningful content," *inter alia,* from "the standards for new security issues set forth in § 7." In the case of operating companies, it has also been the practice of the SEC, as was done in this case, to insist that the accounts and financial structure of

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on June 24, 1935. The report of the House Committee on Interstate and Foreign Commerce explained the omission as follows (H. Rep. No. 1318, 74th Cong., 1st Sess., p. 7):

> Section 21 is changed by omitting the sentence providing that "Nothing in this title shall exempt any public-utility company from obedience to the law of any State in which it operates," on the theory that it imposed a limitation which might interfere with the carrying out of the provisions of section 11 or other sections, under which it might be necessary to do things not permitted under State law.

the reorganized company conform to any ascertainable views of State regulatory authorities, no situation having arisen where such conformity appeared to conflict with carrying out the objectives of the Federal statute.[10]

Reconciling these precedents with the decision below involves holding, as the court below did, merely that the standards of Section 7 are not "absolute limitations upon the powers of the Commission, when dealing with a plan submitted under Section 11(e)", but are merely "admonitory" (R. 398). If, however, Section 7 be deemed fully applicable to the securities issued under the Plan, we believe the mandate of Section 7(g) for compliance with "State laws applicable to the act in question" has reference only to valid requirements under State law concerning matters as to which the Holding Company Act has not prescribed a Federal standard which by its nature completely occupies the field. As we note in the next section, the present case presents an irreconcilable conflict between the views of the PSC and the Federal standard of what is "fair and equitable."

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[10] See the published record of the proceedings of the National Association of Railroad and Utilities Commissioners for 1945, at p. 74 *et seq.* stating, among other things:

> It is the established policy of the Securities and Exchange Commission to foster effective cooperation with the state commissions in all matters where their respective jurisdictions complement each other, and in all additional matters where such cooperation is desirable and appropriate in the case under consideration.

3. Petitioner urges that "there is no irreconcilable conflict between the Federal and State statutory schemes which would warrant the conclusion that the State requirements had been superseded by paramount Federal law" (Pet. 22). In making this argument, petitioner points to the fact that there has been agreement between the SEC and PSC as to the new capitalization and agreement also that the present distribution of voting power is not fair and equitable. It notes that the sole difference between the two commissions is whether existing common stockholders are to receive 7½% of the new common stock or none at all. It is then suggested that the objective of Section 11(b)(2), the correction of inequitable distribution of voting power, could be achieved by letting the PSC have the "final say" concerning the allocation of new common stock (Pet. 23). But the petitioner does not deny that the present reorganization is "for the purpose of fairly and equitably distributing voting power among the security holders", nor has it challenged the unbroken line of authorities holding that the appropriate approach to such a problem is not a mere paper reshuffling of voting rights under the existing structure, but the bringing about of a sound recapitalization vesting voting control in securities which will represent a real equity in a properly balanced capital structure.[11] Once it is

[11] *In re Laclede Gas Light Company*, 57 F. Supp. 997 (E.D. Mo.) affirmed *sub nom. Massachusetts Mutual Life Ins. Co.* v. *SEC*, 151 F. 2d 424 (C.C.A. 8), certiorari denied, 327 U. S. 795; *In re*

recognized that the plan falls within the scope of Section 11 (e), there is no room for doubt that the Holding Company Act requires a federal determination, by the SEC and the enforcement court, of whether the proposed allocation is "fair and equitable." This Court has recently found that Federal control over the terms of a railroad merger leaves no room—even where the Interstate Commerce Commission finds no conflict with basic Federal policy—for the resolution, by reference to State law, of issues relating to the rights of security holders. See *Schwabacher* v. *United States,* No. 258, October Term, 1947.

4. In urging that the plan is "neither fair and equitable, nor feasible" (Pet. 25) the petition scarcely goes beyond mere assertion. As to feasibility, there appears to be merely a reassertion of the alleged veto power of the PSC.[12] If we look to

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United Gas Corp., 58 F. Supp. 501, 509 (D. Del.), affirmed, 162 F. 2d 409 (C.C.A. 3); *In re Jacksonville Gas Company,* 46 F. Supp. 852 (S. D. Fla.); *Southern Colorado Power Co.,* Holding Company Act Release No. 4501 (1944), plan enforced without opinion, D. C. Colo., affirmed *sub. nom. Disman* v. *SEC,* 147 F. 2d 679 (C.C.A. 10), certiorari denied, 325 U. S. 863; *Puget Sound Power and Light Co.,* Holding Company Act Release No. 4255 (1943), plan enforced without opinion (D. Mass.).

[12] In answer to the petitioner's contention that the district court did not have the power to disregard the "condition" that the plan should be submitted to the PSC for its approval, the court below said that "a submission to that commission was not part of the plan at all; but, as it [the plan] itself declared, only one of the 'steps to be taken to make the amended plan effective'" (R. 396). Since, as the court below held, and as we have shown, the consent of the PSC is not essential to the effectiveness of the plan, the plan could be approved without submission to that body.

the opinion of the PSC for elaboration of the argument concerning what is "fair and equitable", it appears that apart from disagreement with the SEC's forecast of future earnings, the views of the PSC rest upon a rejection of reorganization criteria which have been definitely settled by this Court. Thus the PSC has attributed primary significance to adjusted book values rather than earning power, and has measured the claims of the preferred stockholders by reference to their liquidation preference (R. 279-280). By contrast, the decisions of this Court emphasize the primary importance of prospective earnings, rather than book assets, in determining whether treatment accorded in a plan is the equitable equivalent of the rights surrendered.[13] This Court has further held that a Section 11(e) reorganization of a solvent company does not mature liquidation rights of preferred stockholders.[14] The SEC did not oppose the petition for a writ of certiorari in the *Otis* case because of the then novelty of the issue. But it sees no need for now reexamining the merits of that decision, especially in the present context of a mere recapitalization in which there is not even in form a liquidation of the corporation. Thus there is not

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[13] *Group of Institutional Investors* v. *Ch., M., St. P. & P. RR. Co.*, 318 U. S. 523, 539-541; *Consolidated Rock Products Co.* v. *DuBois*, 312 U. S. 510, 525-526; *Ecker* v. *Western Pacific R. Corp.*, 318 U. S. 448; *Reconstruction Finance Corporation* v. *Denver & R. G. W. R. Co.*, 328 U. S. 495.

[14] *Otis & Co.* v. *Securities and Exchange Commission*, 323 U. S. 624; cf. *Schwabacher* v. *United States*, No. 258, October Term, 1947.

here present what appears to have been the most troublesome question presented in the *Otis* case: whether the charter liquidation preference should be deemed the sole measure of the rights surrendered in a reorganization which takes the form of a liquidation.

5. Petitioner's constitutional point is a challenge, albeit not a vigorous one (Pet. 24), to the Federal power to impose uniform standards of fairness with respect to the impact of what is done in furtherance of the commerce power to security holders residing in twenty-eight States and three foreign countries (R. 374). Judge Learned Hand, writing for the Circuit Court of Appeals, found this issue "too trivial to justify discussion" (R. 399).

It is said that the Federal Government cannot, through enforced recapitalizations, require "fundamental changes in the corporate charters granted by the State" (Pet. 24); the only case cited to this effect[15] contained an express statement that nothing was being decided therein respecting the powers of Congress to regulate interstate commerce.[16] It may be noted that the Court of Appeals of the State of New York and the petitioner in a prior case have taken the opposite view.[17]

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[15] *Hopkins Federal Savings & Loan Association* v. *Cleary*, 296 U. S. 315.

[16] 296 U. S. at 343.

[17] The New York Court of Appeals has squarely held that, when the issuance of securities by a New York corporation has been ap-

CONCLUSION

For the reasons stated, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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MAY, 1948.

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proved by the Interstate Commerce Commission under Section 20a of the Interstate Commerce Act, the approval of the PSC as required by the New York statute is to be dispensed with. *People* v. *New York C. R. Co.*, 233 N. Y. 679, 135 N. E. 967, affirming, 199 App. Div. 949, 191 N. Y. Supp. 944. The holding of the New York Court of Appeals in the above-cited case was followed by the PSC in 1943 when it stated that it had no alternative but to indorse its approval on the certificate of incorporation pursuant to Section 38 of the New York Stock Corporation Law in connection with the merger of Postal Telegraph, Inc., and Western Union Telegraph Company, where the issuance of securities involved in the merger had already been approved by the Federal Communications Commission. *In re Western Union Telegraph Co.*, 51 P. U. R. (N. S. 1944) 404, 410-412.

APPENDIX

The pertinent provisions of the Public Utility Holding Company Act of 1935, 49 Stat. 803, 15 U.S.C. 79a, *et seq.* are as follows:

> Sec. 7(g). If a State commission or State securities commission, having jurisdiction over any of the acts enumerated in subsection (a) of section 6, shall inform the Commission, upon request by the Commission for an opinion or otherwise, that State laws applicable to the act in question have not been complied with, the Commission shall not permit a declaration regarding the act in question to become effective until and unless the Commission is satisfied that such compliance has been effected.
>
> Sec. 11(b). It shall be the duty of the Commission, as soon as practicable after January 1, 1938:
>
> * * *
>
> (2) To require by order, after notice and opportunity for hearing, that each registered holding company, and each subsidiary company thereof, shall take such steps as the Commission shall find necessary to ensure that the corporate structure or continued existence of any company in the holding-company system does not unduly or unnecessarily complicate the structure, or unfairly or inequitably distribute voting power among security holders, of such holding-company system. In carrying out the provisions of this paragraph the Com-

mission shall require each registered holding company (and any company in the same holding-company system with such holding company) to take such action as the Commission shall find necessary in order that such holding company shall cease to be a holding company with respect to each of its subsidiary companies which itself has a subsidiary company which is a holding company. Except for the purpose of fairly and equitably distributing voting power among the security holders of such company, nothing in this paragraph shall authorize the Commission to require any change in the corporate structure or existence of any company which is not a holding company, or of any company whose principal business is that of a public-utility company.

The Commission may by order revoke or modify any order previously made under this subsection, if, after notice and opportunity for hearing, it finds that the conditions upon which the order was predicated do not exist. Any order made under this subsection shall be subject to judicial review as provided in section 24.

Sec. 11(d) The Commission may apply to a court, in accordance with the provisions of subsection (f) of section 18, to enforce compliance with any order issued under subsection (b). In any such proceeding, the court as a court of equity may, to such extent as it deems necessary for purposes of enforcement of such order, take exclusive jurisdiction and possession of the company or companies and the as-

sets thereof, wherever located; and the court shall have jurisdiction, in any such proceeding, to appoint a trustee, and the court may constitute and appoint the Commission as sole trustee, to hold or administer under the direction of the court the assets so possessed. In any proceeding for the enforcement of an order of the Commission issued under subsection (b), the trustee with the approval of the court shall have power to dispose of any or all of such assets and, subject to such terms and conditions as the court may prescribe, may make such disposition in accordance with a fair and equitable reorganization plan which shall have been approved by the Commission after opportunity for hearing. Such reorganization plan may be proposed in the first instance by the Commission, or, subject to such rules and regulations as the Commission may deem necessary or appropriate in the public interest or for the protection of investors, by any person having a bona fide interest (as defined by the rules and regulations of the Commission) in the reorganization.

Sec. 11(e) In accordance with such rules and regulations or order as the Commission may deem necessary or appropriate in the public interest or for the protection of investors or consumers, any registered holding company or any subsidiary company of a registered holding company may, at any time after January 1, 1936, submit a plan to the Commission for the divestment of control, securities, or other assets, or for other action

by such company or any subsidiary company thereof for the purpose of enabling such company or any subsidiary company thereof to comply with the provision of subsection (b). If, after notice and opportunity for hearing, the Commission shall find such plan, as submitted or as modified, necessary to effectuate the provisions of subsection (b) and fair and equitable to the persons affected by such plan, the Commission shall make an order approving such plan; and the Commission, at the request of the company, may apply to a court, in accordance with the provisions of subsection (f) of section 18, to enforce and carry out the terms and provisions of such plan. If, upon any such application, the court, after notice and opportunity for hearing, shall approve such plan as fair and equitable and as appropriate to effectuate the provisions of section 11, the court as a court of equity may, to such extent as it deems necessary for the purpose of carrying out the terms and provisions of such plan, take exclusive jurisdiction and possession of the company or companies and the assets thereof, wherever located; and the court shall have jurisdiction to appoint a trustee, and the court may constitute and appoint the Commission as sole trustee, to hold or administer, under the direction of the court and in accordance with the plan theretofore approved by the court and the Commission, the assets so possessed.

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